

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-DL-191
	)	
Access.1 Communications Corp.	)	NAL/Acct. No.200232500009
Owner of Antenna Supporting Structure 1051379	)	
located in Marshall, Texas	)	FRN 0006-1618-55
New York, New York	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** September 30, 2002

By the Enforcement Bureau, Dallas Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Access.1 Communications Corp. (“Access.1”), willfully violated Section 17.50 of the Commission's Rules (“Rules”)<sup>1</sup> by failing to clean or repaint its antenna structure as often as necessary to maintain good visibility. We conclude that Access.1 Communications Corp. is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On or about August 1, 2000, Access.1 acquired the antenna supporting structure number 1051379 located in Marshall, Texas. Both the FCC Rules and the Federal Aviation Administration specifications for this structure required the structure to be painted.

3. On April 17, 2002, an agent from the Commission's Dallas Office noted an antenna structure at or near geographic coordinates 32° 32' 26"N / 094° 24' 4"W in Marshall, Texas. The structure's required obstruction marking appeared to be deteriorating making it difficult to distinguish the orange and white bands.

4. On May 5, 2002, the agent returned to the Marshall, Texas area to inspect the antenna structure noted on April 17, 2002. The required paint bands could not be distinguished at approximately one fourth of a mile, resulting in poor visibility of the structure. The FCC's Antenna Structure Registration database showed Access.1 as the registered owner of this structure.

**III. DISCUSSION**

5. Section 17.50 of the Rules states that antenna structures requiring painting under this part shall be cleaned or painted as often as necessary to maintain good visibility. Access.1 is the registered

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<sup>1</sup> 47 C.F.R. § 17.50.

owner of antenna structure number 1051379 and is responsible for maintaining the structure's lighting and marking. On May 5, 2002, Access.1 failed to maintain good visibility of its antenna structure number 1051379 located in Marshall, Texas.

6. Based on the evidence before us, we find Access.1 Communications Corp. willfully<sup>2</sup> violated Section 17.50 of the Rules.

7. Pursuant to Section 1.80(b)(4) of the Rules,<sup>3</sup> the base forfeiture amount for failure to comply with prescribed marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>4</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>6</sup> Access.1 Communications Corp. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Access.1 Communications Corp. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>3</sup> 47 C.F.R. § 1.80(b)(4).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>7</sup> See 47 C.F.R. § 1.1914.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Access.1 Communications Corp., 505 Eighth Avenue, Ninth Floor, New York, New York 10018.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
Dallas Office, Enforcement Bureau